

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 08-10 (PJS/FLN)

United States of America,
Plaintiff,

v.

MOTION FOR DISCOVERY
OF INTERNAL REVENUE DOCUMENTS

Francis Leroy McLain,
Defendant.

The Defendant by and through his attorney hereby moves the Court for an order, pursuant to Rule 16 of the Federal Rules of Criminal Procedure, and such other statutory and constitutional rules relating to discovery, directing the Plaintiff to permit discovery, inspection and copying of the following:

1. *The Case History Sheet prepared by the Revenue Officers assigned to this case;*
2. *The Twenty Factors analysis to determine employee or independent contractor status;*
3. *The W-2 forms and FICA forms for the period of the indictment for all persons who are claimed to be employees;*
4. *The transcript of accounts for all persons who are claimed to be employees for the period of the indictment;*
5. *The tax returns for all persons who are claimed to be employees for the period of the indictment;*
6. *The Special Agent Handbooks for the period of the indictment.*

The Defendant Francis Leroy McLain is charged with nine counts of failure to pay

withholding of payroll employee taxes and employee FICA taxes in violation of 26 U.S.C. § 7202 for the period of January 31, 2003 to January 31, 2005, with factual allegations for a period of about 1987 to 2005. Three search warrants were issued in May 2005 and a business was searched in St. Paul, a residence in Minneapolis, and a residence in Montana. Five internal hard drivers of between 120 gigabits and 240 gigabits were seized and have been cloned and have been provided to the defendant as discovery. The government has accumulated during the course of its multi year long investigation of the defendant 80 boxes of discovery, most are the size of bankers boxes and some are bigger, an estimated. 200,000 plus pages. However, it does not appear that any of the above requested discoveries are part of the 200,000 pages of hard drives.

The court should grant the discovery motion because the requested discovery is necessary for the preparation and investigation of the allegations of the indictment. The lack of timely such discovery prior to the trial is a continuing due process violation and if done shortly before the trial will deprive the Defendant of a fair opportunity to a meaningful defense. There is a great likelihood that the defendant would be harmed in his ability to prepare a defense by delayed access to the materials.

Defendant requests the Court pursuant to Rule 15(c) to direct the United States Attorney to promptly supply to counsel for the Defendant an material ordered produced pursuant to this motion which comes into the possession, knowledge, or control of the United States Attorney subsequent to the entry of the orders requested or during the course of the trial and further promptly advise counsel for the Defendant of the existence of any such materials should such knowledge be brought to the attention of the United States Attorney.

Defendant further requests that the Court order Plaintiff to comply with the discovery order immediately and no later than four weeks before the trial hearing date.

This motion is based on the indictment, the records and files in the above-entitled action, and any and all other matters which may be presented prior to or at the time of the hearing of said motion.

Dated: May 30, 2008

Respectfully submitted,

s/ Rick E. Mattox

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